

Notice of Allowability

Application No.

10/083,749

Applicant(s)

JAWORSKI, RICHARD CHARLES

Examiner

JAMES C. KERVEROS

Art Unit

2138

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Supplemental AMENDMENT filed 4/15/2005.
2. ☒ The allowed claim(s) is/are 16-28, Renumbered as Claims 1-13.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 10/21/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

ALBERT DECADY
PATENT EXAMINER
2138

NOTICE OF ALLOWANCE

This is a Notice of Allowance in response to Supplemental AMENDMENT filed 4/15/2005. Claims 1-15 have been cancelled. Claims 16-28 were previously examined.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Richard Jaworski on December 1, 2005.

The application has been amended as follows:

The ABSTRACT of the Disclosure has been replaced with a new Abstract:

A method for testing the upstream channel of a cable modem system, using a tester, which generates and transmits a known test pattern to the Cable Modem Termination System (CMTS). If there are errors in the packet resulting from the upstream channel, the CMTS discards the packet based on standard Internet Protocol. If there are no errors the packet is returned on the downstream channel to the tester. The tester counts all returned test packets received including test packets with errors resulting in the downstream. Packets with errors are not discarded, but are checked for a portion of the repeating test pattern and checked for the correct number of bits of a

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test packet. All packets determined to be test packets, including those with errors, are counted over a period of time and compared to the number of packets originally sent.

CLAIM 16 has been replaced as follows:

16. (New) A method for separately determining the performance of the upstream and downstream paths of a cable network, comprising:

transmitting from a tester, Internet Protocol (IP) test packets through a cable network to a Cable Modem Terminating System, wherein the IP test packets contain instructions to return the IP test packets back to the tester;

returning the IP test packets back to the tester from the Cable Modem Terminating System, wherein some of the returned IP test packets received at the tester without errors, and some of the returned IP test packets received at the tester with errors, as a result of the downstream patent;

bypassing error checking in the tester for the returned IP test packets received at the tester with the errors;

checking the IP test packets with the errors in the tester to identify the IP test packets with the errors as IP test packets;

determining if any of the IP test packets were lost in the upstream or downstream paths, wherein the determining of the downstream path is based on the IP test packets received at the tester with the errors, and the determining of the upstream path is based on the IP test packets not received at the tester; and

determining over a measurement time period, performance test results of the upstream or downstream paths, based on the number of the IP test packets transmitted from the tester through the cable network to the Cable Modem Termination System compared to the number of IP test packets received at the tester with the errors and furthermore, based on the number of the IP test packets transmitted from the tester through the cable network to the Cable Modem Termination System compared to the number of IP test packets received at the tester without the errors.

CLAIM 20, at the end of the claim, replaced the comma “,” with a period “.”.

Allowable Subject Matter

Claims 16-28 are allowed. Renumbered as Claims 1-13.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The prior arts of record taken alone or in combination fail to teach, anticipate, suggest or render obvious the claimed invention of a method, as recited in the independent claim 16, including inter alia, the step of “determining over a measurement time period, performance test results of the upstream or downstream paths, based on the number of the IP test packets transmitted from the tester through the cable network to the Cable Modem Termination System compared to the number of IP test packets received at the tester with the errors and furthermore, based on the number of the IP

test packets transmitted from the tester through the cable network to the Cable Modem Termination System compared to the number of IP test packets received at the tester without the errors”.

Consequently, claims 16-28 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES C. KERVEROS whose telephone number is (571) 272-3824. The examiner can normally be reached on 9:00 AM TO 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Date: 1 December 2005
Office Action: Allowance

JAMES C KERVEROS
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Art Unit 2138

By:  12/1/2005


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